

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO. 04-370-10
	:	
FRANCIS D. McCracken	:	

GOVERNMENT’S GUILTY PLEA MEMORANDUM

I. INTRODUCTION.

On November 2, 2004, the federal grand jury returned a 63-count superseding indictment charging 10 defendants with conspiracy to use the mails and interstate wires to deprive the citizens of the City of Philadelphia of the honest services of City Treasurer Corey Kemp, mail and wire fraud, extortion, making false statements to FBI agents, perjury, making false statements to obtain bank loans, money laundering, and filing false federal income tax returns.

The superseding indictment charges defendant Francis D. McCracken with:

- three counts of making false statements to obtain a \$480,000 construction loan from Commerce Bank to repair and renovate the St. James Chapel, Church of God in Christ, in Reading, Pennsylvania in June 2003, in violation of 18 U.S.C. § 1014 (Counts 45 through 47);
- four counts of laundering the proceeds of the church loan fraud scheme, in violation of 18 U.S.C. § 1956(a)(1)(B)(i) (Counts 48 through 51); and

-- six counts of mail fraud relating to a scheme to fraudulently divert approximately \$15,000 from a state welfare-to-work program for McCracken's personal use, in violation of 18 U.S.C. § 1341 (Counts 52 through 57).

In addition, pursuant to an agreement with McCracken, the United States Attorney will file an information charging him with evading the payment of federal income taxes due on approximately \$603,000 in income McCracken and another individual received between late 2001 and June 2004. McCracken has agreed to plead guilty to the superseding indictment and the information.

## II. MAXIMUM PENALTIES.

The maximum sentences the Court may impose are as follows:

- Counts 45 to 47 (false statement to a bank, in violation of 18 U.S.C. § 1014), on each count, 30 years imprisonment, a five-year period of supervised release, a \$1 million fine, and a \$100 special assessment;
- Counts 48 to 51 (money laundering, in violation of 18 U.S.C. § 1956), on each count, 20 years imprisonment, a three-year period of supervised release, a \$500,000 fine, and a \$100 special assessment;

- Counts 52 to 54 (mail fraud, in violation of 18 U.S.C. § 1341), on each count, five years imprisonment, a three-year period of supervised release, a \$250,000 fine, and a \$100 special assessment;
- Counts 55 to 57 (mail fraud, in violation of 18 U.S.C. § 1341), on each count, 20 years imprisonment, a three-year period of supervised release, a \$250,000 fine, and a \$100 special assessment; and
- Count 1 of the information (tax evasion, in violation of 26 U.S.C. § 7201), five years imprisonment, a three-year period of supervised release, a \$250,000 fine, a \$100 special assessment, and an order to pay costs of prosecution and all taxes, interest, and penalties.

The total maximum sentence is: 290 years imprisonment, a five-year period of supervised release, a \$6.25 million fine, a \$1,400 special assessment, costs of prosecution, and all taxes, interest, and penalties. Full restitution of as much as \$65,000 plus all unpaid taxes, interest, and penalties shall also be ordered.

### III. ELEMENTS OF OFFENSES.

#### A. Loan Fraud.

The essential elements of making a false statement to obtain a bank loan, in violation of 18 U.S.C. § 1014 (Counts 45 through 47), are:

1. The defendant knowingly made a false statement to a bank;

2. For the purpose of influencing, in any way, the action of the bank;
3. On an application for a loan or advance; and
4. The deposits of the bank were insured by the Federal Deposit Insurance Corporation.

B. Money Laundering.

The essential elements of money laundering, in violation of 18 U.S.C.

§ 1956(a)(1)(B)(i) (Counts 48 through 51), are:

1. The defendant knowingly conducted or attempted to conduct a financial transaction;
2. The property involved in the financial transaction in fact involved the proceeds of the loan fraud scheme charged in Counts 45 to 47 of the superseding indictment;
3. The defendant knew that the property involved in the financial transaction represented the proceeds of some form of unlawful activity; and
4. The defendant knew that the transaction was designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of the loan fraud scheme charged in Counts 45 to 47 of the superseding indictment.

C. Mail Fraud.

The essential elements of mail fraud, in violation of 18 U.S.C. § 1341

(Counts 52 through 57), are:

1. The defendant, having devised or intended to devise a scheme or artifice to defraud and to obtain money or property by means of materially false or fraudulent pretenses, representations, or promises;
2. Knowingly used or caused the use of the United States mails or a commercial interstate carrier;
3. For the purpose of executing the scheme or artifice.

D. Tax Evasion.

The essential elements of tax evasion, in violation of 26 U.S.C. § 7201

(Count 1 of the information), are:

1. The existence of a substantial tax deficiency;
2. The defendant acted willfully in evading the assessment or collection of the tax due; and
3. The defendant committed an affirmative act in an attempt to evade or defeat the tax due.

IV. FACTUAL BASIS FOR PLEA.

If this case were to proceed to trial, the government would prove the following beyond a reasonable doubt:

A. The Church Loan Fraud Scheme.

In May 2003, the St. James Chapel, Church of God in Christ, in Reading, Pennsylvania (“the Church”), applied for a \$480,000 construction loan from Commerce Bank to repair and renovate the Church’s building. McCracken, the Church’s pastor, and co-defendant Corey Kemp, a Church member, prepared the loan application and supporting paperwork. At McCracken’s direction, co-defendant Jose Mendoza, a carpenter McCracken employed in various renovation projects, assisted in the preparation of the paperwork.

In the Church’s application to Commerce Bank, McCracken and Kemp proposed to do \$700,000 worth of renovations on the Church, with the Church agreeing to contribute \$220,000 of this amount. Commerce Bank approved the loan and, on June 25, 2003, the Church obtained a \$115,000 advance on the loan to pay for construction expenses Kemp and McCracken claimed had been incurred and were still unpaid at the time of the closing. Although renovations had been made to the Church, Kemp and McCracken exaggerated the costs of these renovations in false and inflated invoices that they manufactured and submitted to the bank so that they could steal a portion of the loan proceeds. Kemp and McCracken diverted approximately \$50,000 of the loan proceeds for their own benefit, laundering the funds through a number of

different bank accounts to disguise the fact that the diverted funds came from the fraudulently obtained Commerce Bank loan advance.

The construction budget Kemp and McCracken submitted to the bank included, among other things, \$92,100 for audio-visual work at the Church, \$399,950 for an elevator, and \$70,000 for work on the sanctuary. The budget did not provide for any payments to Kemp or McCracken or for payment of expenses other than for construction at the Church. Commerce Bank Senior Regional Vice President Stephen M. Umbrell, a co-defendant with respect to other charges, approved the loan and sent a commitment letter to the Church on June 25, 2003. The same day, the loan closed in Ronald A. White's law offices. Umbrell and a bank paralegal, Valerie Coates, attended the closing on behalf of Commerce Bank. Miriam T. D'Elia, an associate attorney at White's law firm, represented Commerce Bank.

1.     The loan documents.

The loan documents were standard forms providing for a construction loan with no money to be paid out at the closing. The documents required the Church to submit invoices and permit bank inspectors to inspect the renovations before receiving any of the loan proceeds. This arrangement was confirmed in a June 23, 2003 intercepted telephone conversation in which D'Elia informed Kemp that it would be a "dry closing," that is, the bank would disburse no money at settlement. Kemp then arranged with Umbrell to bypass this language in the loan documents; Umbrell and Commerce Bank

official Jay Neilon approved an advance of approximately \$115,000 to be disbursed at the June 25, 2003 closing without the Church having to submit a draw request or submit to inspection of the renovations.<sup>1</sup> The advance was ostensibly to be used to pay outstanding invoices and reimburse the Church for construction expenses.

According to the loan documents, the loan funds were “not [to be used] for Personal, Family, Household Purposes or Personal Investment Purposes.” The “Specific Loan Purpose” was “to finance the site improvement and construction costs in connection with the construction of the proposed property.” The documents further provided that the funds could be disbursed only for work actually done and for materials and equipment actually incorporated into the project. There was no provision for payments to Kemp or McCracken.

2. The inflated and manufactured invoices.

To support the request for the advance, Kemp and McCracken submitted to Commerce Bank false and inflated invoices exaggerating the construction expenses. Kemp and McCracken falsely claimed that a McCracken-owned inactive shell corporation, Berks County Resource Consortium, Inc. (“BCRCI”), had performed work on the Church, failing to disclose McCracken’s ownership of BCRCI and the fact that it was a shell corporation with no employees. At Kemp and McCracken’s direction,

---

<sup>1</sup>Commerce Bank paralegal Valerie Coates, who handled the pre-closing and closing of the loan wrote in the file, “I did what I was told to do.”



Mendoza, the Church's handyman, signed a document falsely representing that he was BCRCI's "general manager," thus hiding McCracken's sole control of BCRCI.

Kemp and McCracken also submitted to Commerce an invoice from Dolan Construction, Inc., a Reading construction company, showing that Dolan had charged the Church \$51,873.29 for renovations. In fact, Dolan had billed the Church for approximately \$39,000. McCracken and Kemp also submitted three fraudulent invoices from BCRCI totalling \$41,000 that exaggerated the costs of Mendoza's renovations. In fact, the renovations performed by Mendoza only cost between \$10,000 and \$20,000.

Kemp told bank officials in recorded conversations that the advance was needed to pay outstanding invoices for Church renovations. He did not tell them that he and McCracken would be using the funds for themselves. On June 23, 2003, Kemp told Umbrell that the Church would like to be "reimbursed" for some of its prior renovation expenses. Umbrell replied that the Church could be reimbursed if it had cancelled checks and invoices showing payment of these expenses. Kemp said that for some of the expenses "we have invoices that we didn't pay yet." Umbrell told Kemp to bring invoices to the closing and that the bank would advance the funds to pay these invoices. At the closing, Kemp supplied the inflated Dolan invoices and manufactured BCRCI invoices.

In recorded conversations, McCracken and Kemp arranged to manufacture the fraudulent invoices and submit them to Commerce. On June 18, 2003, Kemp and McCracken discussed "mak[ing]" the BCRCI invoices and settled on using Mendoza's

cellular telephone as the telephone number for BCRCI. In response to Kemp's request for a telephone number to put on the BCRCI invoices, McCracken provided a telephone number for a St. James-related entity, noted that the telephone would not be answered "BCRCI," and asked, "does it matter?" Kemp replied, "Yeah it matters, just in case they call," and then laughed. On June 23, 2003, Kemp told McCracken that McCracken had made several mistakes in the BCRCI "invoice" and needed to correct them and e-mail the invoice to Kemp. Ten minutes later, Kemp told McCracken that he had made the changes to the invoice and asked McCracken to redo "the other one." On June 23, 2003, Kemp also told McCracken that he was going to talk to "Steve [Umbrell]" to see whether they could be reimbursed for past expenses incurred in renovating the Church. Kemp said that these expenses would include what they "made up" for BCRCI and ones "for Dolan." In those conversations, Kemp also asked McCracken if he had figured out how they were going to "pay" themselves; the two discussed using for themselves \$90,000 from the loan proceeds advanced. Investigators found the fraudulent BCRCI invoices Kemp and McCracken submitted to Commerce not only in the bank's loan file, but on Kemp's personal computer.

McCracken directed Mendoza to falsely represent that he was the general manager of BCRCI, thereby hiding McCracken's interest in BCRCI. Mendoza worked for McCracken doing renovations on the Church for approximately two months in the summer of 2003 and working on other properties for the previous couple of years.

Mendoza never worked for BCRCI or saw BCRCI doing any work on the Church; indeed, he saw no evidence that BCRCI was anything other than McCracken's inactive shell corporation. Mendoza performed approximately \$10,000 to \$20,000 worth of work at the Church in early and mid-2003 for which McCracken paid him cash. The Church did not spend \$41,000 to \$70,000 on renovations as the invoices and the construction budget submitted to Commerce represented. Instead, McCracken's financial records show that a maximum of only approximately \$8,500 could have been spent on the renovations between mid-2002 and mid-2003.

Kemp and McCracken also asked Mendoza to help them manufacture false invoices to submit to the bank. Specifically, Kemp and McCracken asked Mendoza how they could inflate the amount spent on the Church while still making these amounts appear plausible to the bank. Mendoza agreed to assist them. McCracken, Kemp, and Mendoza then made invoices exaggerating the number of people that worked on the job and the costs of the materials. In a June 23, 2003 recorded conversation, Kemp, McCracken, and Mendoza came up with numbers to put on the BCRCI invoices. Kemp told McCracken to put the numbers on an invoice and Kemp said he would then "doctor it up."

At McCracken's instruction, Mendoza also signed a contract between the Church and BCRCI, falsely stating that Mendoza was the "general manager" of BCRCI and that BCRCI would perform work on the Church, and concealing the fact that

McCracken owned and controlled BCRCI and was the only signatory on its bank account. McCracken signed this contract on behalf of the Church and submitted it to the bank on June 25, 2003, making it appear as an arm's-length transaction between BCRCI and the Church. Kemp and McCracken never told the bank that McCracken was the owner of BCRCI, that it was a shell corporation with no employees, that Mendoza was not actually employed by or the "general manager" of BCRCI, and that the work cost substantially less than what was represented in the manufactured invoices. Further, according to Commerce Bank paralegal Valerie Coates, no one disclosed to the bank that McCracken was the owner of BCRCI; she believed that the invoices were accurate and that the advance would be used to pay the invoices. She did not know that Kemp or McCracken would be using the loan proceeds to pay their personal expenses.

Kemp and McCracken's effort was similar with respect to the Dolan invoices. Dolan Construction submitted proposals to McCracken to perform approximately \$51,000 worth of repairs and other rehabilitation work on the Church. During Dolan's performance of the work, McCracken decided not to do approximately \$13,000 worth of this work. Dolan issued a credit memo to the Church for this amount, making the Church's invoiced amount approximately \$38,000, all of which the Church paid in 2002.

In a June 23, 2003 conversation between Kemp and McCracken, they discussed submitting invoices from Dolan falsely stating that the Church was charged

\$51,000 by Dolan instead of the “real” amount, which Kemp inaccurately stated was \$32,000:

Kemp: The way I see it, and I’m looking at it through my eyes, ‘cause this is Corey Kemp’s eyes, but, my eyes make it work. We are going to get \$51,000 from Dolan, from the Dolan contract we paid. Now, between you and I, we’re fudging that number and I will tell you why later.

\* \* \*

Kemp: Let me tell you something, ‘cause they sent us two invoices, right, Dolan did. One says \$32,866 and the other one says \$19,000. Well there is really only one invoice, but they broke it into two pieces so it makes it look like their invoice was for \$50,000, but the only real invoice is for \$32,000.

McCracken: No the truth of the matter is, we wrote them a check for \$20,000 good faith to get the project started.

Kemp: Right, but the bottom line is we getting \$51,000 from that.

Just a few hours before this conversation, Kemp falsely told White’s associate attorney D’Elia that the Church had paid Dolan \$51,873.29.

In addition to the Dolan and BCRCI invoices, McCracken and Kemp submitted another estimate from Nazca Communications LLC which fraudulently represented that Nazca would perform audio-visual work at the Church for a price of \$92,100. In actuality, one of Nazca’s principals, Kemp, and McCracken had arranged with a Nazca employee to inflate the invoice by \$12,000, which Nazca personnel agreed to give back to Kemp and McCracken to split. On June 23, 2003, Kemp and McCracken discussed how Nazca would charge them \$92,100 and that McCracken had told a Nazca

employee to put some money “in there for us.” To hide the \$12,000 kickback, Kemp and McCracken intended to use a company they controlled called “I’m Him Productions” to use to invoice the Church for the excess \$12,000. On July 14, 2003 conversation Kemp and McCracken agreed to tell Nazca to bill I’m Him Productions. Bank records from Leesport Bank show that McCracken is the signatory for the I’m Him Productions checking account. The government has found no evidence that I’m Him Productions had any operations or employees.

Kemp also told McCracken that he would have to make a \$1,000 cash payment to Umbrell to persuade Umbrell to waive some of the loan’s closing costs. In a June 24, 2003 conversation, Kemp informed McCracken of the loan closing costs. Kemp then said that he hoped that the telephone line was not “tapped” (which in fact it was). He told McCracken he could see if he could do some “under the table stuff” and explained that he could get some of the closing costs waived, but that it would cost him a “hand rub” and that he would have to pass a bank official an “envelope.”<sup>2</sup> In an October 14, 2003 interview with FBI agents, Kemp admitted that McCracken had given him the \$1,000 in cash, which he kept and did not deliver to Umbrell.

At all relevant times, the deposits of Commerce Bank were insured by the Federal Deposit Insurance Corporation.

---

<sup>2</sup>As a favor to Kemp, Umbrell agreed to waive the bank’s \$3,500 appraisal fee.

3.     The diversion and laundering of the loan proceeds.

At the June 25, 2003 Church loan closing, Commerce gave a \$115,898.37 check to McCracken and Kemp, constituting a \$120,000 advance minus the bank's fees. McCracken and Kemp made sure that this money was not deposited in the Church's regular bank accounts which were maintained by the Church bookkeeper. Instead, they deposited the check into the Church's Commerce Bank account and immediately wire transferred \$90,000 from the Commerce account to a "Pastor's Aid" account at Leesport Bank. In a June 25, 2003 telephone conversation with a Commerce Bank representative and long-time Kemp friend, Kemp arranged to have this money transferred from Commerce to the Leesport account. McCracken was the sole signatory on the Leesport account. On June 23, 2003, when discussing how they would "pay" themselves from the loan proceeds, Kemp told McCracken, "anything in the Pastor's Aid account, we control." The bookkeeper stated that the Church has its two main accounts at Wachovia Bank in Reading, one for the Church members' offerings and a savings account for donations to be paid to the pastor. The bookkeeper does not handle any accounts at Leesport Bank. Further, the bookkeeper knew nothing of the receipt of any of the loan proceeds, which did not go through the Church accounts.

On June 25, 2003, McCracken signed two \$5,000 checks drawn on the Leesport Bank account made out to Kemp. Kemp deposited these checks into his personal Commerce Bank account. Over the next four months, Kemp received \$25,500

more of the loan proceeds in violation of the loan documents, all via checks signed by McCracken. Among this money was \$18,000, in four checks signed by McCracken, drawn on another Church account, the St. James Aid Account, which were used to pay Kemp's personal expenses such as, among others, his utility bills, mortgage, and car payments. The four checks contained the notation "CK" in the memo area. The St. James Aid Account, held at Sovereign Bank, was used for the Church's "Bill Management Program." Under this program, Church members who could not control their spending, manage their money, or pay their bills would give the Church bookkeeper their paychecks or cash and a list of their bills. The bookkeeper would then deposit this money into the Bill Management Account and pay the member's bills from the account. By using the St. James Aid Account to launder \$18,000 in loan proceeds, McCracken and Kemp attempted to disguise the fact that the loan proceeds were for Kemp's, not the Church's, benefit.<sup>3</sup>

---

<sup>3</sup> In an August 21, 2003 conversation, Kemp and McCracken discussed the need to make it appear that the Leesport Bank account was not connected to the loan. McCracken said he wanted to use some of the loan proceeds to pay off a separate line of credit held by the Church at Commerce Bank. McCracken said he did not want to write checks directly from the Church's Commerce Bank account which was supposed to contain the loan proceeds. McCracken said that he should write a check and deposit it into the Leesport account and then write a check from the Leesport account to pay off the Commerce Bank line of credit so Commerce would not discover that Kemp and McCracken were using the loan proceeds to pay off the line of credit instead of using it to pay construction expenses. Kemp agreed.



Kemp and McCracken discussed this use of the loan proceeds for Kemp's bills in intercepted conversations. On August 12, 2003, after discussing the use of the loan proceeds, McCracken told Kemp that he was "putting aside" \$4,000 per month for Kemp. Similarly, on June 23, 2003, Kemp asked McCracken if McCracken figured out how they were going to "pay themselves" out of the loan proceeds. McCracken replied, "I already figured it out, we are going to take so much out at a time." Indeed, McCracken and Kemp did just that: on July 8, 2003, McCracken wrote a \$4,000 check from the Leesport Bank account to "St. James Chapel" and gave it to the Church bookkeeper. The bookkeeper deposited the check into the Bill Management Account and then paid Kemp's mortgage, car payment, utilities, and a landscaper for Kemp's property. The day before, Kemp confirmed with McCracken that McCracken had dropped off "some bills" with the Church bookkeeper. McCracken also wrote a \$4,000 check from the Leesport Bank account on August 1, 2003, a \$6,000 check on August 13, 2003, and a \$4,000 check on October 6, 2003, all of which were deposited into the Bill Management Account at Sovereign Bank and used to pay Kemp's personal expenses. In addition, McCracken wrote Kemp two checks totaling \$7,500 from the Leesport account on September 13, 2003, which were marked "loan" in the memo section. Kemp deposited these checks into his personal checking account at Commerce Bank, bringing his total receipts from the loan proceeds to \$35,500.

Kemp and McCracken also planned to use \$50,000 of the proceeds to invest in a racetrack project proposed for the Philadelphia Naval Shipyard through co-defendant Ronald A. White in which Kemp's interest would be hidden. In an April 22, 2003 conversation, White told Kemp he had obtained some information regarding the "racetrack" and would send it to Kemp. Approximately three weeks later, on May 14, 2003, Kemp told White that his "guy" from Reading was "down . . . with the racetrack." On June 24, 2003, after nervously stating that he should have called White on his cell phone, Kemp asked White whether White still needed the "fifty" for the "racetrack." White replied, "yeah" and said that he was "working on that." On July 7, 2003, after discussing the use of the loan proceeds and the construction project, McCracken told Kemp that "we have to get ourselves prepared for the Ron White deal." McCracken said that was going to take a "chunk of change" and that he was slowly putting money into "the account." Kemp described the deal as "an investment," with limited partners, and said that White was "politicking" only on McCracken's behalf and could not do so for Kemp because of Kemp's "position." Following disclosure of the government's investigation in October, 2003, the racetrack deal has not come to fruition.

4. Concealment of the use of the loan proceeds.

In addition to the money laundering described above involving the Bill Management Account, Kemp and McCracken went to considerable lengths to conceal from Church members their receipt and use of the loan proceeds. The Church has a 10-

person steering committee which McCracken established in approximately 2001. It is made up of Church members, some of whom are Church employees dependent on McCracken for their livelihood or who are McCracken relatives. The purpose of the steering committee is to advise McCracken about important issues involving the Church, including, among others, financial matters. To conceal their Church loan fraud scheme, McCracken and Kemp presented false and incomplete information about the renovations and the Commerce Bank loan to the steering committee. In informing the committee that the Church would attempt to obtain a construction loan from Commerce Bank, Kemp and McCracken did not disclose the amount of the loan, that the Church had received a \$115,000 advance on the loan, or that Kemp and McCracken were using some of the proceeds of the loan for their own personal expenses. Steering committee members did not know that Kemp and McCracken had received any of the proceeds of the loan and did not know that McCracken and Kemp were using the proceeds to pay their personal expenses. Similarly, McCracken and Kemp never told the committee the full details about the use of BCRCI in obtaining of the loan; indeed the minutes of the steering committee meetings do not even mention BCRCI.

From the approximate total of \$115,898.37 in loan proceeds that McCracken and Kemp deposited in the Leesport Bank Pastor's Aid Account, only \$27,198.78 was used for what are arguably actual construction expenses, plus another \$9,100 paid to Mendoza. Another \$19,858 was paid for non-construction-related Church

expenses. Of the remainder, Kemp received \$35,500, and BCRCI received \$29,375.

McCracken used most of the BCRCI money, deposited into its account at Leesport Bank, to pay his personal expenses, including, among other things, a delinquent City of Reading tax bill for \$12,417.93, his daughter's tuition at Kutztown University, and \$5,700 in charitable contributions to the Church. The government estimates that approximately \$50,000 of the \$115,000 advance was diverted for Kemp's and McCracken's personal expenses.

The remainder of the loan was never extended. In August, 2003, Kemp and McCracken requested an additional draw from Commerce, which the bank declined because there was no new work and there were no new invoices to support the request. On October 7, 2003, however, Commerce vice-president Umbrell informed Kemp by e-mail that Umbrell would agree to modify the loan to the Church to allow Kemp and McCracken to get an 80% advance on any draw they requested. That never happened; on that day the government's investigation was exposed when a listening device was discovered in the Mayor's office, soon bringing to an end all of the conspiratorial conduct.

B. The Fraud In The Welfare-to-Work Program.

Between approximately June 2001 and December 2003, McCracken and Kemp stole approximately \$15,000 from a state and federally funded welfare-to-work program operated by St. James Community Development Corp. ("CDC"), a company

started by McCracken and affiliated with the Church. Kemp and McCracken falsely claimed that BCRCI was performing “consulting” and advocacy work for the program and billed the program \$500 per month when, in fact, BCRCI did nothing.

In 2001, the Pennsylvania Department of Public Welfare (“DPW”) solicited proposals from community-based organizations for programs designed to contact individuals about to be removed from the welfare rolls for failing to comply with welfare requirements that they attempt to obtain skills and enter the workforce. At Kemp’s and McCracken’s direction, co-defendant Rhonda M. Anderson incorporated CDC to apply for the grant. Anderson obtained information for the grant application from Kemp and McCracken, including the false information that BCRCI was an operating corporation. She drafted and submitted a proposal to DPW on behalf of the Church to obtain approximately \$48,000 in state and federal money to operate the welfare-to-work program, referred to as the Community Connections Initiative (“CCI”).

Among the things that the DPW sought in its request for proposals was the ability to “partner” with other community organizations so as to broaden community support for the program. The CDC proposal falsely stated that CDC, in operating the program, would “partner” with BCRCI and another McCracken-controlled shell corporation called Berks Training Institute, which would provide “consulting” and other services to the welfare recipients. The CDC proposal included a fictitious contract between BCRCI and CDC that contained the forged signature of McCracken’s ex-wife as

the owner of BCRCI, and provided that CDC would pay \$6,000 per year to BCRCI for consulting. DPW awarded a welfare to work contract to CDC, and McCracken signed a contract with DPW in June 2001.

Through March 2004, the state disbursed approximately \$125,000 to the CDC as part of the program by sending the checks listed in Counts 52 through 57 of the superseding indictment by United States mail to CDC from Harrisburg on the dates listed in those counts. A church employee deposited the checks into an account in CDC's name at Wachovia Bank. While the CDC did operate through St. James Church, making contacts with welfare recipients, BCRCI received paid \$15,000 from state funds over the life of the program for doing nothing.

Only two church employees did any work on the CDC program. BCRCI performed none. The church employees saw that BCRCI was McCracken's company and that it had done no consulting, had no employees, and existed only as a shell corporation. To obtain the money for BCRCI, Kemp and McCracken supplied numerous false and misleading reports to the DPW in support of requests for the CCI money, including false claims that BCRCI had performed consulting work. In addition, to further conceal the scheme, McCracken falsely told his accountant that BCRCI had obtained this \$15,000 from DPW as payment for "consulting" and "advocacy" work.

C.     The Tax Evasion Scheme.

Between approximately 1995 and July 2004, McCracken was employed not only as a church pastor but also as an executive of Reading Broadcast, Inc. (“RBI”), a corporation that owned a television station in the Reading, Pennsylvania area. RBI is a private corporation with several shareholders and a board of directors. The television station, known as “TV-51,” was seen in numerous markets in Eastern Pennsylvania, including Philadelphia and Reading. While McCracken was its president, the station broadcast numerous “infomercials,” home shopping programs, and, for a time, McCracken’s religious television show, called “Air Gospel,” which was taped at the St. James Chapel.

In approximately 2000, McCracken became RBI’s president. He was employed full-time at the television station, working at the church at night and on the weekends. McCracken was paid a salary and, without the approval of RBI’s board of directors, arranged for himself to be paid a 10-percent commission on the sale of TV-51’s air time to a company that used the air time to broadcast the company’s programs. McCracken also directed that other employees be paid commissions. Between late 2001 and June 2004, McCracken and one of the other RBI employees receiving commissions (“Person No. 1”) conspired to evade the payment of federal income taxes on more than \$600,000 in these air time commissions paid to them by RBI.

Specifically, in approximately September 2001, with the assistance of Person No. 1, who was a former attorney employed as the station's special projects director, McCracken incorporated a limited liability company called "Framco LLC." Around the same time, Person No. 1 also incorporated a limited liability company called KGR New Perspectives LLC. Like McCracken, Person No. 1 received from RBI a salary and air time commissions, although in lesser amounts than McCracken. On November 19, 2001, in a memorandum, after consultation with Person No.1, McCracken directed the RBI office manager and bookkeeper to "cease issuing commission checks to [Person No. 1] and to me. Instead issue [Person No. 1]'s commissions to New Perspectives, L.L.C . . . Issue my commissions to Framco L.L.C."

Based on this memorandum, from late 2001 through June 2004, RBI issued all of McCracken's and Person No. 1's commission checks to these companies. The commissions no longer appeared on McCracken's and Person No. 1's W-2 forms even though they had appeared on previous W-2s. RBI continued to issue W-2s to McCracken and Person No. 1, but which showed their salaries only. In early 2002, the RBI bookkeeper asked both McCracken and Person No. 1 whether it was required that the commissions be reported on IRS Forms 1099 since they no longer appeared on their respective W-2s. McCracken and Person No. 1 told the bookkeeper that they did not know the answer to her question and would check with RBI's accountant. Later, in late January 2002, just before the deadline for issuing 1099 forms, McCracken and Person No.



1 told the bookkeeper that no 1099s were required. The failure to issue the 1099 forms had the effect of assuring that the IRS did not get notice of these payments.

To further hide the tax evasion scheme, McCracken directed RBI's accountant to prepare RBI's financial statements in a manner that concealed the payment of the commissions to McCracken and Person No. 1. These financial statements were shown to RBI's board of directors and shareholders. Also, despite his attendance at numerous board of directors meetings between 2001 and 2004, McCracken did not disclose to RBI's board of directors or its treasurer that he and Person No. 1 were receiving these commissions.

In sum, between November 2001 and June 10, 2004, RBI paid McCracken and Person No. 1 \$603,287.77 in commissions, approximately \$500,000 of which went to McCracken's company, Framco, and the remainder of which went to Person No.1's company. No federal income taxes were timely paid on these commissions. Indeed, McCracken did not timely file any tax returns for the years 2001, 2002, and 2003 for himself or Framco. While Person No. 1 filed timely returns for these years, his tax returns were false and did not report any income from the RBI commissions in 2001, 2002, and 2003 and included only the wage income appearing on his RBI W-2. Person No. 1 later filed amended returns, but only after being contacted by the government in this investigation and being informed that the government was aware of the existence of KGR

New Perspectives LLC. Person No.1's amended returns reported the commissions paid to KGR New Perspectives LLC.

McCracken did not file returns for 2001, 2002, or 2003 until after he learned that he was being investigated by the Federal Bureau of Investigation and IRS and after his accountant reported to him that he had been subpoenaed to the grand jury and was questioned by the government about the RBI commission payments to Framco. McCracken has since filed tax returns for 2001, 2002, and 2003, listing as income some of the concealed payments to Framco, but has failed to pay the tax due.

V. PLEA AGREEMENT

The parties have entered into a plea agreement, a copy of which is attached. In the agreement, McCracken agrees to be sentenced under the Sentencing Guidelines, and to waive any claim of the application of Blakely v. Washington, 124 S. Ct. 2531 (2004). The plea agreement contains several detailed stipulations relating to guideline adjustments.

The plea agreement also contains a waiver of McCracken's right to appeal or seek collateral review of the conviction and sentence. The Court is required by Federal Rule of Criminal Procedure 11(b)(1)(N) to address this waiver at the guilty plea hearing.

Respectfully submitted,

PATRICK L. MEEHAN  
United States Attorney

---

MICHAEL A. SCHWARTZ  
Assistant United States Attorney  
Chief, Corruption, Labor, and Tax Section

---

ROBERT A. ZAUZMER  
JOAN L. MARKMAN  
RICHARD J. ZACK  
Assistant United States Attorneys

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Government's Guilty Plea Memorandum has been served by Electronic Court Filing and/or United States mail upon the following:

Joel H. Slomsky, Esquire  
1500 John F. Kennedy Blvd.  
Two Penn Center, Suite 1204  
Philadelphia, PA 19102

Counsel for Francis D. McCracken

---

RICHARD J. ZACK  
Assistant United States Attorney

DATED: December 2, 2004.